

Before the
Administrative Hearing Commission
State of Missouri

DEPARTMENT OF HEALTH & SENIOR)	
SERVICES, BUREAU OF EMERGENCY)	
MEDICAL SERVICES,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0555 DH
)	
KELLY SCOTT,)	
)	
Respondent.)	

DECISION

Kelly Scott is subject to discipline for falsifying documentation of his compliance with the continuing education requirements for the renewal of his license as an Emergency Medical Technician-Paramedic (“EMT-P”).

Procedure

The Department of Health and Senior Services (Department) filed a complaint seeking to discipline Scott’s license on April 10, 2013. On October 2, 2013, by leave of the Commission, Scott filed his answer. We convened a hearing on January 10, 2014. Brenda K. Rackers represented the Department. David F. Barrett represented Scott. The case became ready for our decision on July 10, 2014, the date the last written argument was filed.

Findings of Fact

1. Scott holds an EMT-P license issued by the Department. The license is current and active through January 31, 2016, and was so at all relevant times.

2. At all relevant times, Scott was a Fire Captain for the City of Independence, Missouri.

3. In February 2010, Scott was seriously injured while working as a firefighter with the City of Independence. The rotator cuff injury Scott sustained required him to be off duty or on limited duty for approximately one year, during which time he underwent surgery and rehabilitative therapy.

4. On January 21, 2011, Scott applied for relicensure. At the time, he remained on medical leave, but was preparing to return to work at the City of Independence.

5. Relicensure as an EMT-P requires proof of current certification in Advanced Cardiac Life Support (ACLS) as well as proof that the applicant has completed 144 hours of continuing education credits during the preceding five years.

6. As required by the relicensure application, Scott provided a list of continuing education credits he purportedly earned in the preceding five years and a copy of a current ACLS card.

7. In his application for relicensure, Scott inadvertently reported some continuing education credits that he earned in 2005. These were not applicable to the current five-year retrospective period, beginning in 2006, for which he was supposed to be providing verification.

8. Nevertheless, Scott had the requisite number of continuing education units for relicensure on January 31, 2011 because he had earned additional credits through his employer that he did not report in the application.

9. In submitting the application, Scott affirmed that: "This application contains no misrepresentations or falsifications and the information given by me is true and complete to the best of my knowledge. I further certify that I have both the intention and the ability to comply with the regulations promulgated under Chapter 190, RSMo." Pet. Ex. 6 at 5.

10. Within days of Scott's relicensure, his Assistant Fire Chief, Joe Lay, determined that the City of Independence did not possess a recent card evidencing Scott's current certification in ACLS. He contacted Scott and demanded that Scott provide proof of his current ACLS certification.

11. Lay and Scott had a contentious work relationship at the City of Independence, at least in part because Scott played a role in the termination of another employee with whom Lay was living at the time.

12. On February 18, 2011, Lay called the Department and asked how Scott could have qualified for relicensure as an EMT-P without a current ACLS certification. Lay provided the details, in writing, of his own investigation upon which he determined Scott was not currently certified in ACLS.

13. Scott told Lay he had been recertified through an online tool offered by a provider called EZ-ACLS. Scott sent Lay a copy of an e-mail containing the ACLS certification card with current dates, which he had attached to his relicensure application.

14. Lay concluded the ACLS card was not authentic.

15. Based on Lay's allegations, the Department opened its own investigation, and Investigator Terry Ellsworth determined that Scott had misreported his continuing education courses and hours and that he failed to attach proof of current certification in ACLS to his relicensure application.

16. Both Lay and Ellsworth searched the internet, but neither found a Web site for EZ-ACLS, the internet provider that Scott recalled using for supplemental training in ACLS.

17. During the pendency of the Department's investigation, in late February or early March of 2011, Scott underwent another rotator cuff surgery.

18. Due to the permanent physical limitations Scott suffered from the rotator cuff injury, he was unable to resume serving as a firefighter. Scott therefore applied for disability through his pension provider and retired as Fire Captain.

19. Scott's only evidence of his enrollment and participation in ACLS training in 2010 was the copy of the ACLS certification card he provided the Department with his application.

Conclusions of Law

We have jurisdiction to hear the Department's complaint under § 190.165.2,¹ which provides:

The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. . . .

The Department has the burden of proving that Scott has committed acts for which the law allows discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989). In order to prevail, the Department must show cause for discipline by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* at 230. This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992). When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony. *Id.*

¹ All statutory references are to RSMo Cum. Supp. 2013 unless otherwise noted.

The Department cites § 190.165.2(3), (6), and (11), which allow discipline for:

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate, permit or license issued pursuant to sections 190.100 to 190.245 [the comprehensive emergency medical services systems act²] or in obtaining permission to take an examination given or required pursuant to sections 190.100 to 190.245;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 190.100 to 190.245, or of any lawful rule or regulation adopted by the department pursuant to sections 190.100 to 190.245;

(11) Issuance of a certificate, permit or license based on a material mistake of fact[.]

The continuing education requirements and qualifications for relicensure for an EMT-P are contained in the Department's regulation 19 CSR 30-40.342(3)(B)2, which provides:

2. An applicant shall certify to the EMS Bureau:

A. That they have successfully completed one hundred forty-four (144) hours of continuing education which meet the EMS Bureau's approval criteria under 19 CSR 30-40.331, forty-eight (48) hours of which may be elective topics and the remaining ninety-six (96) hours covering all elements of the EMT-P core continuing education curriculum;

B. That they are able to produce documentation of the required continuing education and will make all records available to the EMS Bureau on request. Licensees shall maintain such records for a period of five (5) years after the relicensure. Failure to obtain and retain complete and accurate documentation shall be cause for taking action upon a license; and

C. That they have current advanced cardiac life support training (can be counted toward the refresher requirement).

Subdivision (3) – use of fraud, deception, misrepresentation in securing a license

As part of its role in regulation of EMT licenses, the Department has promulgated a form entitled the EMS Personnel License Application (“the Application”), which is the document that

² Title of the Act, as adopted pursuant to Section 190.001, RSMo 2000. Department regulations refer to it by title. In all other respects the regulation language is identical to that in the corresponding statutory provisions.

Scott completed and electronically filed in order to renew his license in 2011. The Department avers that Scott is subject to discipline because he misreported his continuing education hours and falsified his status as currently certified in ACLS. By doing so, the Department contends that Scott engaged in fraud, deception, and misrepresentation in order to secure relicensure, and that he is therefore subject to discipline.

A “misrepresentation” is a falsehood or untruth made with the intent of deceit rather than an inadvertent mistake. *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 3 (Mo. App. W.D. 1997). Fraud is “generally under the common law as an intentional perversion of truth to induce another, or to act in reliance upon it.” *Id.* at 899 n.2. Misconduct is the intentional commission of a wrongful act. *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App. W.D. 2001). Deception means an act designed to cheat someone by inducing their reliance on misrepresentation. *State ex rel. Nixon v. Telco Directory Publishing*, 836 S.W.2d 596, 600 (Mo. banc 1993). To “deceive” is “to cause to believe the false.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 584 (unabr. 1986).

Scott was consistent in his contention that he had taken and passed an online refresher course in ACLS at some time during his convalescence, but the details of his version of events were inconsistent and could not be verified. For example, Scott produced what he said was his e-mail from EZ-ACLS with an image that appeared to be his ACLS card displayed below the text. But the e-mail contained no address of origin or indication of date and time it was sent and received. Scott told the investigators that he no longer had the original e-mail from which the related electronic correspondence was sent. Additionally, Scott initially reported that he paid a \$50 fee for the course, but could provide no receipt from EZ-ACLS or other proof of a credit or debit card transaction in that amount to the company. Later, he said he did not remember paying for the course. Finally, we note that each time Scott was questioned by Lay about the proof of

current ACLS certification, Scott would insist that he needed to get recertified as soon as possible, suggesting an awareness that he was not actually current in his certification. At the hearing, he testified that he now believed he had been defrauded. We find that Scott's testimony that he believed he possessed a current, legitimate ACLS certification at the time he applied for relicensure was not credible.

We do not find, however, that Scott intentionally misrepresented his continuing education units earned. We believe that his inclusion of hours earned more than five years ago was inadvertent, particularly since he had the requisite number of hours required for relicensure.

But based on the falsification of his credentials for current certification in ACLS, we conclude that the Department carried its burden in demonstrating that Scott intentionally perverted the truth and engaged in deceptive behavior to get the Department to issue a license to which he was not really entitled. Therefore we find that Scott engaged in fraud, deception and misrepresentation in order to secure recertification as an EMT-P, so his license is subject to discipline under section 190.165.2(3).

Subsection (6) – violation of any regulation

By certifying to the Department that he was currently certified in ACLS, Scott violated the lawful regulations of the Department mandating that he meet certain minimum training requirements to keep current in the knowledge and skills needed to perform as a paramedic. He did not have the minimum training in accordance with 19 CSR 30-40.342(3)(B)2, so there is cause for discipline of Scott's license under § 190.165.2(6).

Subsection (11) – issuance of a license based on a material mistake of fact

A material mistake of fact is one that is so essential that it dominates and controls the conduct of a party relying upon it and one that goes to the very essence of the object in view. *Wood v. Evans*, 43 Mo. App. 230, 1891 WL 1412, *2 (Mo. App. 1891). The word "material" is

not defined in § 190.165, but as used in a different licensing statute, it “means important information about which the [licensing agency] should be informed and which may influence a licensing decision[.]” Section 339.100.2(25).

The very fact that the Department has promulgated a rule requiring proof of current ACLS certification as a condition for licensure demonstrates that proof of such fact is material. Thus, we find that Scott’s relicensure based on his misrepresentation that he was currently certified in ACLS constituted issuance of a license based on a material mistake of fact. This is cause for discipline under § 190.165.2(11).

Summary

Scott is subject to discipline under § 190.165.2(3), (6), and (11).

SO ORDERED on October 10, 2014.

\s\ Karen A. Winn

KAREN A. WINN
Commissioner